

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Assistant Secretary for Community Planning and Development****24 CFR Parts 594 and 595**

[Docket No. R-95-1665; FR-3389-F-02]

RIN 2506-AB48

**John Heinz Neighborhood Development Program**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** The John Heinz Neighborhood Development Program was established as a permanent program in the Housing and Community Development Act of 1992. Previously, the program had been administered by the Department as a demonstration program. Pending this final rule, the permanent program has been implemented through Notices of Funding Availability (NOFAs) published in the **Federal Register**. The most recent NOFA was published on February 24, 1995.

This final rule establishes the requirements applicable to the permanent program and contains HUD's responses to comments received on the proposed rule. The rule, which takes effect before the deadline for applications under the February 24 NOFA, will govern that NOFA and future funding competitions that may be announced from time to time.

**EFFECTIVE DATE:** April 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gene Hix, Grant Officer, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7218, 451 Seventh Street SW., Washington, D.C. 20410; telephone number (202) 708-2186. The TDD number is (202) 708-1455. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535-0084.

**Background**

Section 832 of the Housing and Community Development Act of 1992

(42 U.S.C. 5318a) established the John Heinz Neighborhood Development Program as a permanent program of the Department. Previously, the program had been authorized and operated as a demonstration program, pursuant to section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). On June 8, 1993 (58 FR 32210), HUD published a proposed rule addressing requirements of the permanent program. This proposed rule referenced a notice of funding availability (NOFA) that was published on the same day as the proposed rule (58 FR 32215) and invited public comment on the announced requirements.

**Discussion of Public Comments**

The Department received only one comment in response to the proposed rule. The comment, from the National Neighborhood Coalition, incorporated four separate points that are addressed in this section of the preamble.

(1) *Neighborhood resident participation.* The commenter stated that two conditions are critical to the success and sustainability of the organization and projects that it undertakes. The comment emphasized the importance of both participation by residents of the neighborhood and a governing body whose composition reflects the demographic characteristics of the neighborhood. HUD agrees with this observation, and the final rule indicates that NOFAs developed for this program will give appropriate weight to this factor.

(2) *Neighborhood Development Funding Organizations (NDFO).* Another comment questioned the requirement that an applicant obtain the participation of an NDFO (bank) located within the neighborhood, noting that a number of organizations do not have bank branches located within their neighborhoods. The final rule clarifies this requirement by omitting any requirement that the NDFO be located within the neighborhood.

(3) *Record of past performance of an applicant.* Another comment suggested that the record of past performance of an applicant is a critical factor. HUD took this comment into consideration, but believes that the record of past performance is adequately reflected in other factors. The final rule is unchanged on this point.

(4) *Smaller Grants to Fledgling Organizations.* The commenter also suggested that HUD make smaller grants in the \$5,000 to \$20,000 range to fledgling organizations to help them get started. HUD already has the authority to make smaller grants to these

organizations; therefore, the final rule is unchanged on this point.

**Removal of Part 595**

Currently 24 CFR part 595 contains regulations for the Neighborhood Self-Help Development Program. Although this program was conceptually similar to the John Heinz Neighborhood Development Program, the authorizing legislation for the Neighborhood Self-Help Development Program was repealed in 1981 (42 U.S.C. 8121 note, 95 Stat. 398). Therefore, the Department is removing part 595 from the Code of Federal Regulations, in order to avoid confusion about the status of that program.

**Other Matters***Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The program implemented by this rule will provide incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the program implemented by this rule is to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families is indirect and beneficial, no further review is considered necessary.

*Environmental Review*

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the

initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes program regulations for the award of grants to neighborhood development organizations for the purpose of supporting local efforts to improve opportunities relating to employment, business, housing, and services within the participating neighborhoods.

#### *Semiannual Agenda of Regulations*

This rule was listed as Item No. 1842 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57663), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

The Federal Domestic Assistance Catalog number for this program is 14.242.

#### **List of Subjects**

##### *24 CFR Part 594*

Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Urban renewal.

##### *24 CFR Part 595*

Community development, Grant programs—housing and community development, Urban renewal.

Accordingly, and under the authority of 42 U.S.C. 3535(d), 24 CFR chapter V is amended as follows:

1. Part 594 is added to read as follows:

#### **PART 594—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM**

##### **Subpart A—General**

Sec.

594.1 Applicability and purpose.

594.3 Definitions.

##### **Subpart B—Eligibility**

594.5 Eligible applicants.

594.7 Other threshold requirements.

594.10 Eligible activities.

##### **Subpart C—Funding Allocation and Criteria**

594.15 Allocation amounts.

594.17 General criteria for competitive selection.

##### **Subpart D—Award and Use of Grant Amounts**

594.20 Submission procedures.

594.23 Approval and certification procedures.

594.25 Project administration.

594.28 Environmental reviews.

594.30 Equal opportunity and other Federal requirements.

**Authority:** 42 U.S.C. 3535(d) and 5318a.

##### **Subpart A—General**

###### **§ 594.1 Applicability and purpose.**

(a) *General.* This part establishes as a permanent program the John Heinz Neighborhood Development Program, as authorized by section 832 of the Housing and Community Development Act of 1992. Previously, the program had been administered by the Department as a demonstration program under Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note).

(b) *Purpose.* The program is intended to assist communities to become more viable, by providing incentive funds to carry out neighborhood development activities that benefit low- and moderate-income families. The program objectives are to increase the capacity of neighborhood organizations, promote long-term financial support for their neighborhood projects, and encourage greater participation of neighborhood organizations with private and public institutions.

###### **§ 594.3 Definitions.**

*Empowerment zone* means an area designated by HUD as an Empowerment Zone under 26 U.S.C. 1391–1393.

*Enterprise community* means an area designated by HUD as an Enterprise Community under 26 U.S.C. 1391–1393.

*Grantee* means an eligible neighborhood organization that executes a grant agreement with HUD under this part.

*HUD* means the Department of Housing and Urban Development.

*Low- and moderate-income persons* means families and individuals whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of HUD in accordance with 42 U.S.C. 5302(a)(20).

*Neighborhood development funding organization* means:

(i) A depository institution, the accounts of which are insured pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., or the Federal Credit Union Act, 12 U.S.C. 1751 et seq., and

any subsidiary (as such term is defined in 12 U.S.C. 1813(w)) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in 12 U.S.C. 1813(w)) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

*Neighborhood development organization* means the same as the term is defined in § 594.5.

*Rural neighborhoods.* In small cities with under 10,000 in population and in rural areas, a neighborhood area can be the same unit as the unit of general local government.

*Unit of general local government* means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; the Federated States of Micronesia; the Marshall Islands; or a general purpose political subdivision thereof.

##### **Subpart B—Eligibility**

###### **§ 594.5 Eligible applicants.**

(a) *General requirements.* To be eligible under this program, a neighborhood development organization must be located within the neighborhood for which assistance is to be provided. It cannot be a city-wide consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following requirements:

(1) The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(2) The organization must be responsible through a governing body to the residents of the neighborhood it serves, and not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(3) The organization must have conducted business for at least one year;

(4) The organization must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974, 42 U.S.C. 5318;

(ii) The area is designated as an Enterprise Community or Empowerment Zone under Federal law as enacted;

(iii) The area is designated as an enterprise zone under State law and is recognized by the Secretary as a State enterprise zone for purposes of this part; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991, 12 U.S.C. 1834a(b)(1); and

(5) The organization must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons.

(b) *Special eligibility.* Any facility that provides small entrepreneurial business with affordable shared support services and business development services and that meets the requirements of paragraph (a) of this section may also be eligible to participate in this program.

#### **§ 594.7 Other threshold requirements.**

In addition, an applicant must meet the following threshold requirements:

(a) Specify a management business plan for accomplishing one or more of the eligible activities specified in § 594.10;

(b) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization; and

(c) Specify a strategy for increasing the capacity of the applicant.

#### **§ 594.10 Eligible activities.**

Eligible activities include, but are not limited to, the following:

(a) Developing economic development activities that include:

(1) Creating permanent jobs in the neighborhood; or

(2) Establishing or expanding businesses within the neighborhood;

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood; and

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts.

### **Subpart C—Funding Allocation and Criteria**

#### **§ 594.15 Allocation amounts.**

(a) *Amounts and match requirement.* HUD will make grants, in the form of matching funds, to eligible neighborhood development organizations. HUD reserves the right to make grants for less than the maximum amount established by statute, and to limit the number of times a previous grantee can receive funding. A Federal matching ratio will be established for each grantee in accordance with the statutory requirement that the highest ratios be established for neighborhoods

having the greatest degree of economic distress or the smallest number of households.

(b) *Administrative costs.* The Secretary may use no more than 5 percent of the funds appropriated for the program for administrative or other expenses in connection with the program.

#### **§ 594.17 General criteria for competitive selection.**

(a) *Criteria.* HUD will use the following general criteria for selecting and ranking applications for all competitions for John Heinz Neighborhood Development Program funds. The relative values for the criteria will be indicated in each NOFA:

(1) The degree of economic distress and the benefit to low- and moderate-income residents of the neighborhood;

(2) The past performance in carrying out eligible activities, and staff capability;

(3) The quality of the Management/Business Plan;

(4) The evidence of coordination and resident participation; and

(5) The quality of the strategy to increase the capacity of the organization and the strategy developed for meeting long-term financial needs.

(b) *Geographic diversity.* The Department also reserves the right to fund applicants in other than rank order, for the purpose of achieving geographic balance.

### **Subpart D—Award and Use of Grant Amounts**

#### **§ 594.20 Submission procedures.**

(a) *Use of NOFAs.* The Department will publish a Notice of Funding Availability (NOFA) in the **Federal Register** for each funding competition under this program, indicating the objective of the competition; the amount of funding available; the application procedures, including the eligible applicants and activities to be funded; and any special conditions applicable to the competition, including the requirements for the match. The NOFA also will describe the maximum points to be awarded under each evaluation criterion, for the purpose of ranking applications, and any special factors to be considered in assigning the points to each criterion.

(b) Applications shall be submitted in accordance with the time, place, and content described in the NOFA.

(Approved by the Office of Management and Budget under control number 2535-0084)

#### **§ 594.23 Approval and certification procedures.**

(a) *Approval of application.* HUD's acceptance of an application for review does not imply a commitment to provide funding. HUD will provide notification of whether a project will be funded in accordance with the criteria and procedures set out in the applicable NOFA.

(b) *Certifications.* In the absence of independent evidence that tends to challenge in a substantial manner the certifications made by the applicant pursuant to § 594.30, the required certifications will be accepted by HUD.

However, if independent evidence is available that tends to challenge in a substantial manner an applicant's certification, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certification is satisfactory.

#### **§ 594.25 Project administration.**

Project administration will be governed by the terms of the grant agreement.

#### **§ 594.28 Environmental reviews.**

(a) For all proposed actions or activities that are not considered categorically excluded under 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA).

(b) Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other applicable requirements of environmental statutes, Executive Orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees shall adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

#### **§ 594.30 Equal opportunity and other Federal requirements.**

Each participating neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity in Housing) (3 CFR, 1958-1963 Comp., p. 652) and implementing regulations at 24 CFR Part 107; and applicable provisions of the Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., including Title VI (42 U.S.C. 2000d) (Nondiscrimination in

Federally Assisted Programs) and its implementing regulations at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 (Equal Employment Opportunity) (3 CFR, 1964-1965 Comp., p. 339) and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and

implementing regulations at 24 CFR part 135;

(d) The requirements of Executive Order 11625 (3 CFR, 1971-1975 Comp., p. 616), Executive Order 12138 (3 CFR, 1979 Comp., p. 393), and Executive Order 12432 (3 CFR, 1983 Comp., p. 198). Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded;

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309);

(f) The requirements of the Americans with Disabilities Act (42 U.S.C. 12181-

12189) and implementing regulations at 28 CFR part 36, as applicable;

(g) The Consolidated Plan of the appropriate unit of general local government; and

(h) Other Federal requirements as specified in the applicable NOFA and application kit.

**PART 595—[REMOVED AND RESERVED]**

2. Part 595 is removed and reserved.

Dated: March 16, 1995.

**Andrew Cuomo,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 95-7402 Filed 3-28-95; 8:45 am]

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